

**IN THE JUSTICE OF THE PEACE COURT NO. 16
OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY**

MARGARET M. MOSLEY,

Plaintiff Below/Appellee,

v.

CONSTANCE V. DEXTER,

Defendant Below/Appellant.

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C.A. No. JP16-10-005890

Before **MURRAY, ARNDT, and SWEET**, Magistrates

ORDER

This is a *de novo* appeal as provided by 25 Del. C. § 5717(a) to a Three Judge Panel from a decision dated December 21, 2010. The panel consisting of Judges Murray, Arndt, and Sweet began trial on January 20, 2011.

Margaret M. Mosley, Plaintiff and Constance V. Dexter, Defendant, appeared *pro se*.

Plaintiff seeks possession and payment of back rent from May 2008, on the basis the Defendant failed to pay rent.

Pre trial, based on the filings, the Court questioned the parties regarding the existence of a landlord/tenant relationship. As a result of the questioning, the parties demonstrated to the satisfaction of the Court that although there was no written lease, there was a meeting of the minds between the parties regarding periodic payment of rent in exchange for occupying the premises. At this point, the Court was satisfied it had jurisdiction and proceeded to trial.

During the presentation of the Plaintiff's case-in-chief, the following was introduced.:

- A copy of the will of Doris Campbell leaving the property to the Plaintiff,
- The Kent County Register of Wills registration of the will,
- A deed transferring the property from the previous owner to Doris Campbell nee Floyd,
- A satisfied mortgage regarding the prior transaction,
- A letter from the Kent County Register of Wills dated October 21, 2009 to the Defendant indicating the Plaintiff had filed the First and Final Account for the estate and requiring all exceptions to the account be filed within 3 months, and

- An inventory for the Register of Wills of the estate indicating "Connie Loper" the Defendant's name at the time, may be a partial heir to the estate.

The validity of the documents was questioned by the Defendant and this again raised the question of jurisdiction of the Court. Final determination of the question of ownership of the property is not within the jurisdiction of this Court. The Court recessed giving specific instructions to both Parties including the advisability of consulting with counsel. (See this Court's order of January 20, 2011)

The Court reconvened on March 3, 2011. Issues of jurisdiction had yet to be resolved. The Court recessed and the Parties were given 45 days to obtain Orders from the Court of Chancery with respect to the ownership of the property in question. (See this Court's order of March 3, 2011) Again, the Parties were advised to consult counsel and failed to do so.

On March 22, 2011, the Court is in receipt of a letter from Master Glasscock of the Court of Chancery dismissing claims by the Defendant regarding claims against the property. The Court assumes jurisdiction and scheduled the trial to reconvene April 28, 2011.

Testimony continued from the point where the Plaintiff left off on January 20, 2011. Evidence and testimony showed there was a verbal rental agreement entered into between the parties to pay \$125.00 per week, beginning in 2005. The rental agreement was a follow-on to an agreement between the Parties to sell the property to the Defendant. Defendant's financing fell through and the Plaintiff agreed to rent the property until such time as financing to purchase could be arranged. Defendant paid rent through April 2008 and when the Plaintiff could no longer afford to continue without the rent payments, noticed the Defendant of the deficiency.¹

Defendant admitted² to owing the rent and failed to pay because she was disputing the ownership of the property. Throughout the trial, the Defendant continued to attempt to contest the property ownership. The Court noted the Defendant has had ample time and opportunity to do so in the proper venue and has failed to successfully dispute the Plaintiff's claim to ownership.

The Court finds the Plaintiff has proved by a preponderance of the evidence, the existence of a landlord/tenant relationship between the Parties, the failure, by the Defendant's own admission, to pay the agreed upon rent, and the existence of notice to the Defendant of the delinquency in rent.

¹ Plaintiff's Exhibit 1, 5 day letter to the Defendant, November 8, 2010.

² "A judicial admission is a formal statement by a party in the course of judicial proceedings, which removes an admitted fact from the field of controversy." *Pesta v. Warren*, 2004 WL 1172996, at*1 (Del. Super.).

Find for the Plaintiff:

\$14,250.00

\$17.85 per diem until the Plaintiff obtains possession of the rental unit.

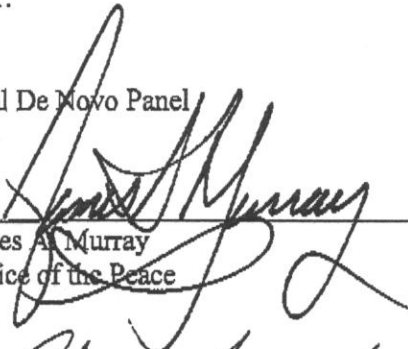
\$75.00 Court Costs

Possession of the rental unit.


Post judgment interest @ 5.75% per annum

IT IS SO ORDERED this 2nd day of May, 2011.


Trial De Novo Panel



James A. Murray
Justice of the Peace



Ernst M. Arndt
Deputy Chief Magistrate



William J. Sweet
Justice of the Peace